

**IN THE HIGH COURT OF JUDICATURE FOR  
RAJASTHAN AT JODHPUR**

**::::**

**ORDER**

**Govind Ram Bhatt  
Vs.  
The State of Rajasthan & Ors.**

**S.B. CIVIL WRIT PETITION NO.2670/2002  
UNDER ARTICLE 226 OF THE  
CONSTITUTION OF INDIA.**

**DATE OF ORDER                      ::                      03<sup>rd</sup> November, 2006**

**PRESENT**

**HON'BLE SHRI JUSTICE MOHAMMAD RAFIQ**

Mr.Harish Purohit, Advocate for the petitioner.  
Mr.Kailash Joshi, Advocate for respondents.

**BY THE COURT**

The petitioner has filed this writ petition with the prayer that the respondents be directed to open the sealed cover containing recommendations of the Departmental Promotion

Committee (for short 'DPC') qua him for promotion to the post of Executive Officer Gr.II against the vacancies of the year 1991-92 and 1992-93.

While the petitioner was serving on the post of Executive Officer Gr.III, Municipal Board, Bhinmal, he was placed under suspension by order of Director, Local Bodies dated 25<sup>th</sup> April, 1998 in contemplation of disciplinary proceedings. His suspension was later revoked by order dated 22<sup>nd</sup> December, 1998. He was however served with the charge-sheet under Rule 16 of the Rajasthan Civil Service (Classification, Control & Appeal) Rules, 1958 (for short 'CCA Rules') on 17<sup>th</sup> July, 1998. The Dy. Director (Adm.), Department of Local Self Government, Jodhpur was appointed as Enquiring Authority in the matter. The Enquiry Officer submitted his report on 19<sup>th</sup> August, 2000. On consideration of the report of Enquiry Officer, the Disciplinary Authority by an order dated 12<sup>th</sup> June, 2001 exonerated the petitioner of the charges against him. In the meantime, when DPC was convened for recommending promotion from the post of Executive Officer Gr.III to

Executive Officer Gr.II against the vacancy of the year 1991-92 and 1992-93, recommendations of the DPC qua the petitioner were kept in the sealed cover due to aforesaid inquiry whereas his junior namely Mohan Lal Gupta was promoted on the post of Executive Officer Gr.II against the vacancies of the year 1991. While the name of the petitioner appears at serial No.12 in the seniority list of the Executive Officer Gr.III dated 10<sup>th</sup> January, 1994, name of said Mohan Lal Gupta appears at serial No.16. Similarly Sarva Shri Mahesh Prasad Sharma, Suresh Chandra Bagoria, Ghanshyam Khatumra and Mool Chand Lohiya were also promoted on the post of Executive Officer Gr.II against the vacancy of the year 1992 all of whom appear much below in the above said seniority list respectively at serial No.20, 21, 40 and 41. By yet another order dated 27<sup>th</sup> May, 1998 Sarva Shri Shashi Kumar Pareekh and Dinesh Chandra Sharma were also promoted on the post of Executive Officer Gr.II against the vacancies of the year 1991-92, 1992-93 and 1993-94 respectively who were all junior to the petitioner. It was enormously delayed on 29<sup>th</sup> March, 2000 that petitioner was promoted on the post of Executive Officer Gr.III as a

consequence of recommendations of newly convened DPC against the vacancies of the year 1992-93 and 1993-94. The petitioner thereupon submitted a representation to the respondents on 11<sup>th</sup> April, 2000 that his promotion should be made for the period from the date of promotion granted to his juniors. All of whom were shown above him in the tentative seniority list of Executive Officer Gr.II dated 09<sup>th</sup> August, 2000 respectively at serial No.7 to 11 whereas the name of the petitioner was shown at serial No.12. The petitioner submitted objection to the aforesaid seniority list but to no avail. Rather the respondents finalized the said seniority list by order dated 29<sup>th</sup> January, 2004 without effecting any changes. Hence the writ petition.

The respondents have contested the writ petition and have filed the reply thereto. It has been admitted that the petitioner by order dated 12<sup>th</sup> June, 2001 exonerated from the allegations levelled against him of the charge-sheet dated 17<sup>th</sup> July, 1998. It has also been admitted that Sarva Shri Mohan Lal Gupta, Mahesh Prasad Sharma, Suresh Chandra Bagoria,

Ghanshyam Khatumra and Mool Chand Lohia who were junior to the petitioner and were promoted as Executive Officer Gr.II against the vacancies of the years 1991 and 1992 respectively. It has also been admitted that Sarva Shri Shashi Kumar Pareekh and Dinesh Chandra Sharma were also promoted as Executive Officer Gr.II against the vacancies of the year 1991-92 and 1993-94 respectively. At the same time however respondents submitted that the petitioner too was promoted as Executive Officer Gr.II against the vacancies of the year 1993-94 vide order dated 29<sup>th</sup> March, 2000. Since the promotion of the petitioner was made later than the others named above, he was rightly shown below them in the seniority list of Executive Officer Gr.II. The respondents have submitted that promotion of the petitioner against the vacancies of the year 1993-94 was made only because the DPC recommended his name for the vacancies of that year alone. The DPC in its meeting held on 27<sup>th</sup> August, 2001 considered the case of the petitioner for further promotion on the post of Commissioner against the vacancies of the years 1998-99, 1999-2000 and 2000-2001 but he was not found suitable and therefore was not recommended

for promotion.

I have considered the arguments advanced by the learned counsel for the parties and perused the records.

While the petitioner in the writ petition has come out with a categorical case that many of his juniors were promoted earlier than him and that this was because of the pending disciplinary proceedings against him owing to which recommendations of DPC qua him against the vacancies of the year 1991-92 and 1992-93 kept in sealed cover, it is surprising to find that the respondents have not come out with any categorical or direct answer as to when the petitioner was exonerated from the charges in the inquiry, why the sealed cover not opened and recommendations given effect too. The order dated 12<sup>th</sup> June, 2001 clearly reflects that disciplinary authority completely exonerated the petitioner and let him off with merely a written warning holding him responsible for ignorance and dropped the inquiry. It would thus be evident that not even a minor penalty was imposed on the petitioner.

It was therefore incumbent upon the authorities to open the sealed cover and give effect to it. They have however merely stated in the reply to the writ petition that the petitioner was promoted against the vacancies of the year 1993-94 on the basis of recommendations made by DPC but no response whatsoever was given to the plea as to when the petitioner was let off with only written warning and not awarded any penalty, why was the sealed cover was not opened up and recommendations contained therein not acted upon. If at all the respondents wanted the order of written warning to reflect upon the consideration by DPC, they could at best order review consideration of the petitioner in the light of such order. They could not have however straightway ignored consideration of the petitioner against the vacancies of the year 1991-92 onwards and promote him only against the vacancies of the year 1993-94 because in between many of his juniors had stolen a march over him. Learned counsel for the respondents could not justify the action of the respondents in not promoting the petitioner against the vacancies of the year 1991-92 when his juniors were promoted. The promotion could not be denied

to the petitioner because warning is not included as one of the penalties under Rule 14 of the CCA Rules, not even as a minor penalty.

In view of the above discussion, the writ petition is allowed and the respondents are directed to consider the case of the petitioner afresh against the vacancies of the year 1991-92 in the light of the final order dated 12<sup>th</sup> June, 2001 passed by disciplinary authority and if adjudged suitable by DPC, promote him on the post of Executive Officer Gr.II with effect from the date his immediate junior was promoted on such post and grant him all consequential benefits. Compliance of this judgment be made within a period of four months from the date copy of this judgment is served upon the respondents. There shall be no order as to costs.

**[MOHAMMAD RAFIQ],J.**

**A.K.Chahar/-**